

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15683 of Ruth and Hibbard Paine and the Golden Eagle Construction Company, Inc., as amended, pursuant to 11 DCMR 3108.1, for a special exception under Section 215* for an accessory parking lot in an R-1-B District to serve a commercial office building at premises 1212 Jackson Street, N.E. (Square 3931, Lot 28).

HEARING DATE: July 8, 1992
DECISION DATES: September 16 and 23, 1992

ORDER

SUMMARY OF EVIDENCE OF RECORD:

1. The property which is the subject of this application is located at 1212 Jackson Street, N.E., (Square 3931, Lot 28). It is zoned R-1-B.

2. The subject lot is L-shaped with 25 feet of frontage on Jackson Street and 50 feet in width at the rear property line. The lot is approximately 150 feet in depth. It contains a total of 5,000 square feet.

3. Lot 28 abuts Lot 806 at the northwestern portion of Lot 28. Lot 806 has approximately 42.5 feet of frontage along 12th Street and extends approximately 100 feet in depth. Lot 806 contains 4,250 square feet of land area and is improved with a one-story commercial office building.

4. Lot 28 has a 14-foot wide asphalt driveway that extends from the Jackson Street entrance to the rear of the property. The driveway is used by the owner to gain access to the rear of the commercial property (Lot 806) which is used by the Golden Eagle Construction Company.

5. The applicant proposes to use the subject lot as accessory parking for five vehicles, including trucks, to serve the commercial use on Lot 806.

6. Lot 28 is located in an R-1-B District which permits as a matter of right the development of single-family detached dwellings. The R-1-B District requires a minimum lot area of 5,000 square feet, a minimum lot width of 50 feet, and allows a maximum lot occupancy of 40 percent and a maximum height of three

* Section 214 in the September 1991 edition of 11 DCMR.

stories/40 feet. An accessory parking lot is permitted in an R-1-B District as a special exception under the provisions of 11 DCMR 215. The provisions of Section 215 are as follows:

215 ACCESSORY PARKING SPACES (R-1)

- 215.1 Accessory passenger automobile parking spaces elsewhere than on the same lot or part of a lot on which the main use is permitted, except for a one-family dwelling, shall be permitted in an R-1 district if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of chapter 31 of this title, subject to the provisions of this section.
- 215.2 Accessory parking spaces shall be in an open area or in an underground garage no portion of which, except for access, shall extend above the level of the adjacent finished grade.
- 215.3 Accessory parking spaces shall be located in their entirety within two hundred feet (200') of the area to which they are accessory.
- 215.4 Accessory parking spaces shall be contiguous to or separated only by an alley from the use to which they are accessory.
- 215.5 All provisions of chapter 23 of this title regulating parking lots shall be complied with, except that the Board may in an appropriate case under Section 2303.3 modify or waive the conditions specified in Section 2303.2 where compliance would serve no useful purpose.
- 215.6 It shall be economically impracticable or unsafe to locate accessory parking spaces within the principal building or on the same lot on which the building or use is permitted because of the following:
 - (a) Strip zoning or shallow zoning depth;
 - (b) Restricted size of lot caused by adverse adjoining ownership or substantial improvements adjoining or on the lot;
 - (c) Unusual topography grades, shape, size, or dimensions of the lot;
 - (d) The lack of an alley or the lack of appropriate ingress or egress through existing or proposed alleys or streets; or

- (e) Traffic hazards caused by unusual street grades or other conditions.

215.7 Accessory parking spaces shall be so located, and facilities in relation to the parking lot shall be so designed, that they are not likely to become objectionable to adjoining or nearby property because of noise, traffic, or other objectionable conditions.

215.8 Before taking final action on an application for use as an accessory parking space, the Board shall have submitted the application to the D.C. Department of Public Works for review and report.

7. The applicant testified that he entered into a contract to purchase the subject property from the owner in November 1990. He applied for and was issued a certificate of occupancy dated December 24, 1990 for a general office building on Lot 806. He began operating the Golden Eagle Construction Company which is in the business of performing District of Columbia, Federal, commercial and residential projects within the city. The company is a general contractor, a home improvement contractor and an electrical contractor.

8. In September 1991, the property was inspected and the applicant was cited for operating illegally. The applicant was instructed to apply for relief from the Board of Zoning Adjustment. This special exception application was filed with the Board on March 5, 1992.

9. At the hearing, the applicant stated that by BZA Order No. 13543, dated January 10, 1982, the Board approved variances to allow a driveway on Lot 28. The driveway was to provide access to the rear of Lot 806.

The applicant stated that without relief from the Board, the property cannot be put to any other use as it currently exists. The applicant, a representative of the Golden Eagle Construction Company, pointed out that when the citation was issued on the property, he and the owner had already settled on the purchase. He had spent a lot of money on the deposit and on the move to the subject property. He testified that it would be very difficult to move the business to another location.

10. The owner of the property stated that Lot 28 is essential to the use of Lot 806. If the application is not approved, there will be more parking on Jackson Street. The property will be abandoned and the city will suffer a tax loss.

The owner stated that the business is an asset to the neighborhood and the District of Columbia. He believes that the owners of the construction company have shown enterprise and foresight by locating in the area. There are better, less expensive locations available in Maryland. He pointed out how positive it is that the construction company employs 20 District of Columbia residents.

The owner stated that no complaints were ever made to him by any of the residents for his commercial activities on the lot during his eight years of occupancy. He stated that the three people who complained at the Advisory Neighborhood Commission meeting about Golden Eagle's operations are newcomers to the neighborhood. They knew of the parking on the lot when they moved to the area.

11. The Office of Planning (OP), by memorandum dated July 1, 1992, and through testimony at the hearing recommended conditional approval of the application. First, OP testified that Lot 806 is located entirely in a C-1 District rather than being split-zoned C-1/R-1-B as it was originally believed.

OP noted the location and physical characteristics of the site. OP stated that the area surrounding the site consists primarily of low density residential development interspersed with a number of commercial establishments along 12th Street N.E. Several small apartment buildings are also located within the immediate vicinity of the site.

OP stated that Lot 28 is currently used for parking and outdoor storage. The property does not abut a public alley. OP stated that the proposed lot would accommodate five vehicles and would have direct access to Jackson Street N.E. to the south by way of the asphalt driveway. The proposed parking area on the northern portion of Lot 28 would be at grade and would be paved with an all-weather impervious surface. Appropriate chain link fencing and screening have been provided on the north and east sides of the proposed parking area in compliance with the Board's previous approval. Additional screening and chain link fencing would be provided along both sides of the existing driveway. A gate would be installed at the end of the driveway on Jackson Street N.E.

The Office of Planning is of the opinion that the proposed parking area on Lot 28 satisfactorily meets the requirements of Section 215 of 11 DCMR. The proposed accessory parking spaces are located within 200 feet of the area to which they are accessory, the parking is contiguous to the principal use, and it is economically impracticable to locate the accessory parking spaces within the principal building or on the same property where the office building is located because the structure occupies the majority of

the lot. In addition, the proposed parking spaces are located in a manner so that they are not likely to become objectionable to adjoining or nearby properties because of noise, traffic, or other adverse impacts. No vehicle or any part of a vehicle would project over the site's lot or building lines. The entrance to the parking area would be located approximately 100 feet from the intersection of Jackson and 12th Streets N.E. Further, the parking area would be used only by the commercial office building to which it is accessory.

Based on the foregoing, OP believes that a special exception for parking vehicles on the subject property can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan. This opinion is conditioned upon use of the property for automobiles only, and only during normal business hours. Overnight parking should not be permitted. The Office of Planning noted that the parking of heavy trucks for industrially-related activities is first permitted in a C-M-1 District. OP stated that the parking of heavy trucks on the subject property does not appear to be appropriate for the surrounding residential neighborhood because of obvious negative impacts such as noise, pollution, etc.

12. Advisory Neighborhood Commission (ANC) 5A submitted a report dated July 1, 1992. In its report, the ANC recommended conditional approval of the subject application as well as Application No. 15682 which was heard at the same time. Application No. 15682 was a request for variances from the use provisions to allow storage of materials on Lot 806 and parking on Lot 28. The ANC report addressed issues related to both of these uses. However, for purposes of this order, only the issues related to special exception relief for a parking lot accessory to the construction company will be presented. The ANC expressed support for application for a number of reasons.

The need for the operation. The ANC stated that Golden Eagle's business is needed in the community. The ANC pointed out that Golden Eagle employs approximately 20 to 25 workers, including five or six summer youth workers. The applicant's workers include master carpenters, an engineer, an electrician, and individuals who cumulatively have 50 to 60 years of experience in the home improvement and contracting business. These are the types of examples needed in the community. Golden Eagle provides opportunities for young people who might otherwise be found standing on the corner. The ANC stated that in view of this critical need for employment and economic development in the community, it is important to make every effort to determine whether applicant's operations can be maintained without harm to the community. The ANC is of the view that the need for the business should be an important factor in considering the application.

Lack of community complaints. The ANC testified that Golden Eagle has been operating at the site for about 18 months and during that time, no one from the community has filed a complaint with the ANC about the operations. Based on this, the ANC concluded that apparently there were no problems with the operation of the business.

The ANC stated that it held two meetings to address the application. At the first meeting only four residents were in attendance. More residents attended the second meeting. Before this matter was brought before the Board, many persons in the community did not know that Golden Eagle Construction Company existed. Many people only knew of the applicant through photographs and representations made by opponents to the case who have refused to meet with the applicant. At least one neighbor has withdrawn her opposition after meeting with the applicant at the location in dispute, seeing first hand what is being stored there and what types of vehicles are being operated.

Adverse impact. The ANC stated that at the Committee of the Whole meeting, residents presented a petition expressing opposition to the application for the following reasons:

- A. danger to children
- B. devaluation of property
- C. the nuisance (disturbance of peace and quiet)
- D. present and future use

The ANC testified that it is proposing conditions which it believes will adequately address the concerns raised by the residents. These conditions are as follows:

- A. The applicant will maintain the opaque chain link fence or other appropriate screening on all sides of the property;
- B. The applicant will not use a loudspeaker or any other amplified sound system on the lot;
- C. The applicant will not park vehicles on the lot which are in excess of the maximum weight requirement set forth in 18 DCMR chapter 25;
- D. Use of the lot will be limited to four vehicles;
- E. There will be no parking in the driveway;
- F. The applicant's trucks will enter the lot from 12th Street, N.E., not from 13th Street, N.E;

- G. The hours of operation of the lot will be restricted to between 6:30 a.m. and 5:00 p.m. When the lot is not in use, the lot will be locked; and
- H. This application will be reviewed periodically to ensure compliance and to determine the impact on the community.

13. A neighbor in support of the application residing at 3125 12th Street, N.E. testified that the operation is an asset to the neighborhood because it promotes business and employs people who need jobs.

14. A representative of 35 neighbors in opposition to the application testified at the hearing. She stated that the use, as proposed, would adversely affect the use of neighboring properties. She testified that the areas of concern to opposing residents are as follows: the industrial-type use, noise, fumes, improper use of the residential streets, the danger to children and adults and the effect on property values.

15. Several area residents who oppose the application appeared at the hearing to testify on the issues that concern them. Their testimony can be summarized as follows:

A. The proposed use. Opponents testified that Golden Eagle's operations are much more intensive than those of the previous business - The American Tool Company. The previous owner only parked one or two small pick-up trucks on Lot 28. On the other hand, Golden Eagle parks about five or six vehicles on the lot. Many of the residents testified that the subject site is visible from their properties.

B. Noise. Opponents stated that they are disturbed early in the morning by the noise created when the trucks are started and left idling. They are also disturbed by the noisy trucks going into and away from the site. One witness knowledgeable about regulations governing sites such as the applicant's, stated that the applicant's operation exceeds the noise levels established by the Noise Control Act. He stated that at 6:30 a.m. (the proposed starting time) the noise level, as measured at the property line, may not exceed 55 dBA. This is the level of a normal conversation. At 7:00 a.m. the permissible noise level changes to 60 dBA. Based on his experience in monitoring noise levels, he stated that the applicant's trucks could not meet these standards.

C. Fumes. Opposing neighbors expressed concern about the diesel fumes that come from the site when the trucks are idling. One witness testified that the Air Pollution Code requires that no vehicle be allowed to idle for more than three minutes.

The applicant's trucks idle for more than three minutes. The trucks are started and the drivers take turns leaving the site. All of the trucks are diesels. They give off a lot of hydrocarbon fumes and particulate matter which are injurious to people's health. Some witnesses testified that the fumes are very strong and can be smelled early in the morning. One witness testified that the fumes make him nauseous.

D. Property values. Opposing neighbors expressed a concern that their property values will decrease because the large trucks that pass through the area cause their houses to vibrate. They believe this will have a damaging effect on their houses and cause their homeowner's insurance to go up. The increased risk of fire will also increase the insurance costs.

Opponents also believe that the location of such an industrial-like business so close to their residential property will cause the devaluation of their properties.

E. Hazards to area residents. Opponents testified that there are about 18 children who live in their neighborhood. These children often play and ride their bikes in and around the driveway used by the construction company (Lot 28). Opponents also testified that many of the area residents are elderly persons who may not hear as well or move as swiftly as they used to. The concern is that the company's trucks travelling in the area present a danger to the area residents, especially the children and elderly. One witness testified that she has worked as a carpenter and project manager in the construction industry for the past 16 years, and she is familiar with the F-30 trucks that Golden Eagle wishes to store on the lot behind her house. She stated that while you can see directly through the rear window of these vehicles, this is only true when the truck is empty. If the truck is fully loaded, the rear window is obstructed, and backing up is very difficult. Since these vehicles have no backup beeper to serve as a warning, they are potentially as dangerous or more dangerous than a dumptruck with a warning device. A driver of the truck cannot see out of the back, nor can a person or child standing or playing behind the truck hear a warning signal.

The witnesses testified that the large trucks and construction vehicles have to back into or out of the driveway because there is not enough space on the lot for them to turn around. There are usually cars parked in the driveway and near the driveway on the street. Because of this, the trucks have to maneuver into the driveway, blocking traffic and creating a dangerous situation for passers-by.

F. Improper use of residential streets. Some of the opponents testified that they have seen the company load and unload their trucks on Jackson Street. They also testified that the

commercial trucks travel residential streets to get to the driveway. Sometimes the trucks are parked on a residential street. Opponents maintain that these practices are illegal.

16. The witness testifying as a representative of opposing neighbors stated that the opponents concur with the opinion of the Office of Planning as expressed in its report of July 1, 1992 which would allow an accessory parking lot for automobiles only during normal business hours, not overnight. Opponents requested that the following conditions be added to those provided by OP:

- A. Normal business hours shall be defined as 8:00 a.m. to 5:00 p.m.
- B. The automobiles should not be allowed to remain over night.
- C. Automobiles must enter and exit the lot facing forward. There shall be no backing in or out of the driveway.
- D. Only four automobiles should be allowed to park on the lot. Five automobiles will not leave enough room to turn around.
- E. The proposed screening and chain link fence shall be erected on all sides of the parking area only.
- F. There shall be no screening or chain link fence erected along the driveway. Such a fence would prevent adjacent homeowners from gaining easy access to the sides of their houses needed for maintenance, gardening, etc.

The representative testified that the opponents disagree with the position of the ANC but that with OP's conditions, modified by their own, they would support the special exception application.

17. The applicant responded to some of the concerns raised by opponents. The applicant stated that he is not familiar with the noise regulations but that there are many buses and trucks that use 12th Street and create noise and fumes. His operation is not necessarily responsible for all of the noise and fumes complained about. Further, to reduce any impact, he would agree to park his largest truck in front on 12th Street.

The applicant stated that his vehicles meet the size limitations for travelling on residential streets. He understands the limitation to be 37,000 pounds. One dump truck is 26,000 pounds. He testified that the trucks will use 12th Street for access to the driveway.

The applicant stated that he wishes to erect a fence and gate at the driveway to keep unauthorized vehicles from parking there and to keep children from playing there.

The applicant pointed out that the operation cannot afford to move to another location. Nor can it separate its office function from its equipment and trucks by carrying the equipment and trucks to Maryland while operating the office in the District of Columbia. Finally, the applicant expressed a willingness to work with the community to resolve the issues of concern to them.

18. At the end of the public hearing, the Board directed the Office of Planning (OP) to convene a meeting between the applicant and area residents to try and resolve some of the issues raised at the hearing. The Board requested that OP submit a supplemental report addressing the meeting. Parties were also permitted to submit their comments.

19. By supplemental report dated September 15, 1992, OP stated that the meeting between the parties was held on July 20, 1992. OP delineated the applicant's position to be as follows:

- A. The large dump truck owned by Golden Eagle Construction Company would not be parked at the rear of the subject property, but rather in the property's front driveway.
- B. The applicants should not be restricted as to the time they are permitted to start trucks during the morning hours.
- C. All trucks owned by Golden Eagle operate at acceptable noise levels in accordance with D.C. regulations.
- D. On the average, only one weekly delivery of construction materials would be made to the subject premises.
- E. If the requested zoning relief in this application is not granted, the subject property could become vacant and potentially fall into disrepair, thus affecting surrounding residential property values in a negative way.
- F. The company would be willing to build an addition to the existing building which would completely enclose the parking and storage area at the rear of the property to help reduce any negative impacts of its operation on the community.

OP then set out the community's position which simply reiterated the issues of concern to residents at the time of the hearing. However, opponents did respond to the applicant's proposal to completely enclose the parking and storage area. The community feels that complete enclosure of the rear portion of the property would be unacceptable because of negative aesthetics and environmental impacts such as reduced open space, light and air.

OP stated that at the close of the meeting it was determined that additional information regarding several of the issues raised would be needed from three District government agencies as follows:

- A. Department of Public Works - The effect of the existing regulations governing acceptable truck noise levels and truck routing plans, according to truck size and type, on the applicants' proposal.
- B. Department of Finance and Revenue - The effect that the proposed zoning relief would have on the property values of residential properties that surround the subject site and on the cost of the residential insurance for those properties.

OP transmitted a memorandum and pertinent materials to both of the agencies listed above requesting the information needed. At the time this report was prepared, OP had not received a response from either of these agencies. OP's report therefore did not express a resolution of any of the issues raised at the hearing.

20. The Board received letters dated July 19, and September 11, 1992 from John Gerrety, a real estate agent specializing in residential properties in the Brookland area. In the letters to the Board the agent made, and supported with evidence, four main points:

- A. There were five residential properties for sale in the area since Golden Eagle located there. The two houses on Kearney Street sold for less than they were worth, and the two houses on Jackson Street and the one on 12th Street never sold and were rented out.
- B. Prior to Golden Eagle's arrival the properties in that area had no trouble selling.
- C. Golden Eagle can find CM zoned property within the District of Columbia; and
- D. If Golden Eagle moved, the property is not likely to remain vacant. No other commercial properties in that area have remained vacant.

21. Two letters were submitted into the record in support of the ANC position. A petition was also received expressing support for the company as an asset to the community.

22. There were several letters opposing the application. These letters addressed the same issues raised at the public hearing.

FINDINGS OF FACT:

Based on the evidence of record, the Board finds as follows:

1. The accessory parking spaces will be in an open area.
2. No portion of the open area will extend above the level of the adjacent finished grade.
3. The accessory parking spaces will be located entirely within 200 feet of Lot 806.
4. The accessory parking spaces will be contiguous to Lot 806.
5. The applicant will comply with all provisions of 11 DCMR 23.
6. It is economically impractical to locate the accessory parking spaces within the building on Lot 806 or on the lot itself because of substantial improvements on the lot.
7. The accessory parking spaces will be located so as not to become objectionable to adjoining or nearby property because of noise, traffic or other objectionable conditions.
8. The application was referred to the Department of Public Works for review. No report was received.
9. The noise created by starting the trucks and allowing them to idle awakens nearby residents in the early morning hours. The noise from warning signals disturbs residents throughout the day.
10. The idling trucks create fumes that negatively affect neighboring residents.
11. The use of trucks at and around the site creates dangerous conditions for children and others in the area.

12. Maneuvering trucks into and out of the driveway obstructs traffic on the street.

Due to the lack of sufficient evidence, the Board makes no finding with regard to:

- (1) whether the noise level of the trucks exceeds the legal limit;
- (2) whether the use of the trucks on the residential street is legal; and
- (3) whether the vibrations from the trucks cause damage to nearby properties.

CONCLUSIONS OF LAW AND OPINION:

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking a special exception to establish accessory parking on a lot located in an R-1-B District.

The granting of a special exception requires a showing through substantial evidence that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The applicant must also meet the provisions of Sections 215 and 2303 of the Zoning Regulations.

The Board concludes that the applicant has met the burden of proof. The Board is of the opinion that, with certain conditions, the accessory parking lot use would be in harmony with the general purpose and intent of the Zoning Regulations and Map. Further, the Board is of the opinion that the use will not affect adversely the use of neighboring property.

The Board concludes that it has accorded ANC 5A the "great weight" to which it is entitled.

In light of the foregoing it is ORDERED that the application is hereby GRANTED, SUBJECT to the following CONDITIONS:


1. Approval shall be for a period of THREE YEARS.
2. All areas devoted to driveways, access lanes, and parking areas shall be maintained in good repair with an all-weather impervious surface paving material in compliance with applicable District of Columbia regulations.

3. No vehicle or any part thereof shall be permitted to project over any lot or building line or within the public space.
4. Screening and chain link fencing shall be provided on all appropriate sides of the parking area and driveway on Lot 28. Where possible, grass shall be planted and maintained in a healthy growing condition along both sides of the driveway.
5. All parts of the lot shall be kept free of refuse or debris and shall be paved or landscaped. Any landscaping (i.e., grass area) shall be continuously maintained in a healthy growing condition and in a neat and orderly appearance.
6. The applicant shall clear the subject property of all debris on a daily basis.
7. The use of the accessory parking lot shall be limited to automobiles during business hours only. No overnight parking shall be allowed.

VOTE: 5-0 (Teresh Boasberg, Paula L. Jewell, Angel F. Clarens and Carrie L. Thornhill to grant; Sheri M. Pruitt to grant by proxy).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: APR 27 1993

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

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UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15683Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15683

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on APR 27 1993 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

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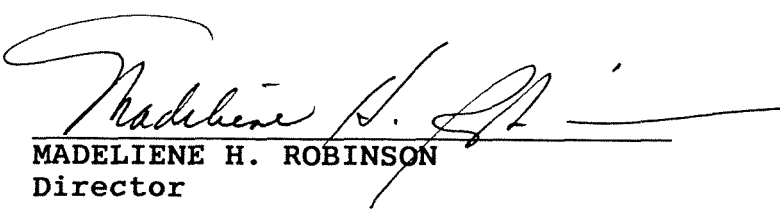
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MADELIENE H. ROBINSON
Director

DATE: APR 27 1993

15683Att/bhs